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9 Attorneys for Third Party Defendant
10 CHARLES CALZA, M.D.

11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12
13 IN AND FOR THE COUNTY OF NORTHERN DISTRICT OF CALIFORNIA
14

15 THE UNITED STATES OF AMERICA,

Case No. C 07 06045 (SC)

16 Plaintiff,

17 vs.

18 MV COSCO BUSAN, ET. AL.,

19 Defendants.

**ANSWER OF THIRD PARTY DEFENDANT
CHARLES CALZA, M.D. TO AMENDED
THIRD PARTY COMPLAINT AGAINST THE
STATE OF CALIFORNIA AND CHARLES
CALZA, M.D.**

20 UNITED STATES OF AMERICA

21 Plaintiff,
(FRCP 14(c))

22 vs.

23 STATE OF CALIFORNIA and CHARLES
24 CALZA, M.D.,

25 Third Party Defendants
(FRCP 14(c))

26 Third Party Defendant Charles Calza, M.D. hereby answers the Amended Third Party
27 Complaint against the State of California and Charles Calza, M.D. as follows:
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- 1 1. Third Party Defendant Charles Calza, M.D. admits the allegations of Paragraph
- 2 1.
- 3 2. Third Party Defendant Charles Calza, M.D. admits the allegations of Paragraph
- 4 2, except that no Exhibit B is attached to the Amended Complaint as alleged therein.
- 5 3. Third Party Defendant Charles Calza, M.D. admits the allegations of Paragraph
- 6 3.
- 7 4. Third Party Defendant Charles Calza, M.D. admits the allegations of Paragraph
- 8 4.
- 9 5. Third Party Defendant Charles Calza, M.D. admits the allegations of Paragraph
- 10 5.
- 11 6. Third Party Defendant Charles Calza, M.D. admits the allegations of Paragraph
- 12 6.
- 13 7. Third Party Defendant Charles Calza, M.D. admits the allegations of Paragraph
- 14 7.
- 15 8. Third Party Defendant Charles Calza, M.D. denies the allegations of Paragraph
- 16 8.
- 17 9. Third Party Defendant Charles Calza, M.D. denies the allegations of Paragraph
- 18 9.
- 19 10. Third Party Defendant Charles Calza, M.D. denies the allegations of Paragraph
- 20 10.
- 21 11. Third Party Defendant Charles Calza, M.D. incorporates his responses to
- 22 paragraphs 1-10 as though fully set forth herein.
- 23 12. Third Party Defendant Charles Calza, M.D. is without sufficient knowledge or
- 24 information to form a belief as to the truth of the allegations contained in Paragraph 12, and on
- 25 that basis denies each and every allegation contained therein.
- 26 13. Third Party Defendant Charles Calza, M.D. is without sufficient knowledge or
- 27 information to form a belief as to the truth of the allegations contained in Paragraph 13, and on
- 28 that basis denies each and every allegation contained therein.

1 14. Third Party Defendant Charles Calza, M.D. is without sufficient knowledge or
2 information to form a belief as to the truth of the allegations contained in Paragraph 14, and on
3 that basis denies each and every allegation contained therein.

4 15. Third Party Defendant Charles Calza, M.D. is without sufficient knowledge or
5 information to form a belief as to the truth of the allegations contained in Paragraph 15, and on
6 that basis denies each and every allegation contained therein.

7 16. Third Party Defendant Charles Calza, M.D. incorporates his responses to
8 paragraphs 1-15 as though fully set forth herein.

9 17. Third Party Defendant Charles Calza, M.D. denies the allegations of Paragraph
10 17.

11 18. Third Party Defendant Charles Calza, M.D. denies the allegations of Paragraph
12 18.

13 19. Third Party Defendant Charles Calza, M.D. denies the allegations of Paragraph
14 19.

15 20. Third Party Defendant Charles Calza, M.D. denies the allegations of Paragraph
16 20.

17 21. Third Party Defendant Charles Calza, M.D. incorporates his responses to
18 paragraphs 1-20 as though fully set forth herein.

19 22. Third Party Defendant Charles Calza, M.D. is without sufficient knowledge or
20 information to form a belief as to the truth of the allegations contained in Paragraph 22, and on
21 that basis denies each and every allegation contained therein.

22 23. Third Party Defendant Charles Calza, M.D. denies the allegations of Paragraph
23 23.

24 24. Third Party Defendant Charles Calza, M.D. is without sufficient knowledge or
25 information to form a belief as to the truth of the allegations contained in Paragraph 24, and on
26 that basis denies each and every allegation contained therein.

27 25. Third Party Defendant Charles Calza, M.D. denies the allegations of Paragraph
28 25.

1 26-39. Third Party Defendant Charles Calza, M.D. is without sufficient knowledge or
 2 information to form a belief as to the truth of the allegations contained in Paragraphs 26-39, and
 3 on that basis denies each and every allegation contained therein.

4 **AFFIRMATIVE DEFENSES**

5 **AS A FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE** to the Third Party
 6 Complaint, this answering defendant alleges that the Complaint fails to state a cause of action.

7 **AS A SECOND, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE** to the Third
 8 Party Complaint, this answering defendant alleges that the Complaint herein does not state
 9 facts sufficient to constitute a cause of action in that the alleged cause of action is barred by the
 10 applicable statute of limitations, including California Code of Civil Procedure §§335.1, 340.5 and
 11 364.

12 **AS A THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE** to the Third Party
 13 Complaint for Damages, this answering defendant alleges that if it should be found that there
 14 was negligence as alleged in plaintiff's Complaint or in connection with the subject matter of the
 15 Complaint, such negligence was that of the plaintiff and of persons, firms, corporations, or
 16 entities other than this answering defendant and comparatively reduces the percentage of any
 17 liability on the part of this answering defendant if it should be found that this answering
 18 defendant is negligent or liable as alleged in the Complaint, which this answering defendant has
 19 denied and does expressly deny.

20 **AS A FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE** to the Third
 21 Party Complaint, this answering defendant alleges that at all times relevant to, on or before the
 22 dates of the occurrence alleged in plaintiff's Complaint, each and every risk and/or danger
 23 proximately causing and/or contributing to the alleged occurrence and/or damages complained
 24 of, if any there actually were, were voluntarily and/or knowingly assumed by the plaintiff.

25 **AS A FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE** to the Third Party
 26 Complaint, in the event this answering defendant is found to be negligent, which is expressly
 27 herein denied, the liability of this answering defendant is limited by reason of California Civil
 28 Code §1431.2.

1 **AS A SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE** to the Third Party
 2 Complaint, this answering defendant alleges that in the event this answering defendant is found
 3 liable, which this defendant denies and states merely for the purpose of this affirmative defense,
 4 this answering defendant may elect to introduce evidence of any amount paid or payable, if any,
 5 as a benefit and claim credit pursuant to Civil Code §3333.1.

6 **AS A SEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE** to the Third
 7 Party Complaint, this answering defendant alleges that in the event this answering defendant is
 8 found to be negligent, which this defendant denies and states merely for the purpose of this
 9 affirmative defense, the damages for non-economic losses shall not exceed the amount
 10 specified in Civil Code §3333.2.

11 **AS AN EIGHTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE** to the Third
 12 Party Complaint, this answering defendant alleges that in the event this answering defendant is
 13 found liable, which this defendant denies and states merely for the purposes of this affirmative
 14 defense, this answering defendant may elect to have future damages paid in full or in part as
 15 specified in Code of Civil Procedure §667.7.

16 **AS A NINTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE** to the Third Party
 17 Complaint, this answering defendant alleges that following the alleged incident herein, plaintiff
 18 failed and neglected to mitigate damages, and that said conduct, failure or omission on plaintiff's
 19 own part proximately caused and contributed to the damages sustained by plaintiff, if any.

20 **AS A TENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE** to the Third
 21 Party Complaint, this defendant alleges that if plaintiff suffered any damage, then the allegations
 22 against this answering defendant are barred by the superseding intervening actions of other
 23 persons.

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1 **AS AN ELEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE** to the
2 Third Party Complaint, this answering defendant alleges that the Complaint is barred by the
3 principles of res judicata and/or collateral estoppel.

4 Dated: 10/3/2008

DONNELLY NELSON DEPOLO & MURRAY

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6 By: /s/
7 SONJA M. DAHL
8 Attorneys for Third Party Defendant
9 CHARLES CALZA, M.D.
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